(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: APR 29 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. The petitioner seeks employment as a geologist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and several supporting exhibits.

Before addressing the merits of the petition, the AAO will address a procedural issue that counsel raises on appeal. Counsel states: "a Notice of Intent to Deny should have been issued before the denial was rendered," and that issuance of such notices ought to be standard operating procedure for U.S. Citizenship and Immigration Services (USCIS). The USCIS regulation at 8 C.F.R. § 103.2(b)(8)(iii) allows the issuance of notices of intent to deny, but does not require them. The regulation states only that USCIS "may" issue such notices, thus leaving the matter to the director's discretion. Furthermore, as discussed below, the director did issue a request for evidence (RFE), thereby serving notice that the petitioner's initial submission was deficient.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility for classification as an alien of exceptional ability in the sciences. The director concluded that the petitioner qualifies as a member of the professions holding an advanced

degree because his occupation requires at least a bachelor's degree and because he has documented several post-baccalaureate degrees. The petitioner has also submitted sufficient evidence to support the original claim of exceptional ability in the sciences, by establishing education, experience and recognition that satisfy the regulatory standards at, respectively, 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B) and (F). Therefore, the petitioner qualifies for the underlying immigrant classification. The denial concerns not the classification itself, but the additional benefit that the petitioner seeks. That benefit is a waiver of the job offer requirement, and thus a labor certification, in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the

professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 25, 2012. The petitioner stated that the position is new, temporary, and pays $73,050 per year. In a statement that accompanied the initial filing of the petition, paralegal stated:

> [The petitioner] exceeds the standard by meeting four (4) factors set forth [in the USCIS regulations at 8 C.F.R.] § 204.5(k)(3)(ii). In addition, he meets the legacy INS's waiver threshold and meets four (4) of the PRE-NYSDOT factors. Specifically (1) he has a degree relating to the area of exceptional ability, (2) he has documentation establishing at least 10 years of experience in the area of exceptional ability, (3) he is a member in good standing of a professional association related to the field of exceptional ability, and (4) he has been recognized by his peers for his achievements in the field of Geology and Mineralogy.

Ms. did not identify the "four . . . PRE-NYSDOT factors" that the petitioner claims to meet. The four numbered elements listed above are all regulatory criteria for exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii), and exceptional ability does not establish eligibility for the national interest waiver. Furthermore, *NYSDOT* is a binding precedent decision, and therefore supersedes any informal guidelines that legacy INS (Immigration and Naturalization Service) may have used prior to its publication in 1998.

Ms. stated:

> [The petitioner] is the recipient of an internationally recognized award from the Academy of Science. He has authored more than 88 scientific publications. Throughout his [career of] 50 years he developed and published a " " His work has been accredited as being evidence of an original scientific achievement of major significance and is in use today in the in Russia. . . .
>
> The scope of [the petitioner's] research and scientific findings will substantially benefit the US economy in the immediate future. This fact is obviated [*sic*] by his offer of employment (subject to approval of his NIW) to conduct a feasibility study on an 1,800 acre track [*sic*] of land in North Central Florida. The area in question has one of the highest concentrations of phosphate in the United States. In today's technologically advanced economy phosphate is used in agriculture, manufacturing, and in scientific research. The feasibility [study that the petitioner] will perform will have a significant and immediate impact of [*sic*] the employment factor in the area.
>
> [The petitioner] has distinguished himself as an authority and expert in the field of Geology and Mineralogy. His resume, education, experience and prolific

> publications attest to his prominence in his field. His future contribution to the Science of Geology and Mineralogy will have a profound impact on the US economy and will also result in significant job creation in FL, which has the highest unemployment rate in the State of Florida and in the continental United States. [The petitioner's] research has focused on improving the environment and making productive use of natural resources.

The petitioner's initial submission did not identify the prospective employer mentioned above, although, on Form I-140, the petitioner indicated that he intended to work at Florida.

The petitioner submitted an uncertified ETA Form 9089 Application for Permanent Employment Certification, as required by the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii). Section K, Alien Work Experience, begins with the instruction to "[l]ist all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity." The petitioner left this section blank. Form G-325A, Biographic Information, submitted at the same time as the petition, indicates that the petitioner retired in 2009 at the age of 71, and has since been unemployed.

The petitioner submitted documentation of the petitioner's employment in the field of geology in Russia, both during and after the Soviet era. The petitioner also submitted a list of 88 "scientific works" he claimed to have written between 1963 and 2002, with 66 described as "printed," 21 described as "manuscript" and one (from 1976) described as "published."[1] The only entry on the list dated after 1989 was a 2002 manuscript entitled " " The petitioner did not submit copies of the published works themselves, or evidence of their publication (such as indexes or database printouts). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, the list is not sufficient evidence of the published work or its impact.

Copies of "orders" from various government bodies in the Union of Soviet Socialist Republics (USSR) and, later, Russia, expressing approval and gratitude for various reports that the petitioner prepared. One translated document reads, in part:

> Scientific and Technical Council (NTS) at its meeting considered the RESULTS of application of " ," presented by the developers – [the petitioner] and [the petitioner's spouse] and by the executors of works in gold-bearing region, in the , in the etc., reviews of various organizations, estimations of experts, of representatives of industrial organizations.

[1] The Russian-language original document did not distinguish between the items listed as "printed" and the one listed as "published," showing the abbreviation "печ." for each.

NTS notes:

- Expert opinions are almost unanimous – the approach itself is novel and the results obtained by the authors using the established bank of gold deposits, are very convincing and could not be obtained by any other method, they require extensive use in practice of forecasting and estimation of territories on the possible detection of gold mineralization;

- It is necessary to note high efficiency with respect to cost and time, which distinguishes the developed system.

On July 18, 2012, the director issued a request for evidence (RFE), instructing the petitioner to "establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole" that would "justify projections of future benefit to the national interest." The director acknowledged that "[t]he petitioner has demonstrated significant training, experience and potential expertise as a Geologist," but found that the petitioner had not shown the impact or influence of the petitioner's past work.

In response, Ms. asserted that the petitioner had previously submitted "documentary evidence of [the petitioner's] widespread acclaim, expertise, experience and significant training in the field of Geology and Mineralogy." The petitioner's prior submissions (resubmitted in response to the RFE) contained a series of claims, but the actual evidence only partially supported those claims. For example, as previously observed, a list of publications is not documentary evidence of publication. It is, rather, a claim to that effect. Even then, the petitioner claimed to have produced only one paper in the last 20 years, and even then referred to it as a "manuscript" rather than a published work made available to others in the field.

Submitted council reports acknowledged the petitioner's work for various government entities, but did not show how the petitioner's work stands apart from that of other qualified geologists working for such agencies. The petitioner did not show that the submitted letters amounted to significant recognition rather than routine acknowledgment of work satisfactorily performed.

Ms. stated that the petitioner has "clearly established" that "[h]is unique skills would benefit the US by providing a method of making more productive use of our national resources that will have a significant impact on improving our environment." Ms. did not explain how the prior submissions supported this claim. Ms. quoted the NTS document regarding the petitioner's "," but the petitioner submitted no evidence to show that the petitioner's method is in widespread use or has had "a significant impact on improving our environment." Simply being a competent and experienced geologist is not enough to warrant the national interest waiver, and the petitioner cannot establish the significance of his past work simply by identifying it.

Ms. stated that the petitioner's "offer of employment to survey 1,800 acres in Northern Florida is definitive proof that his future contribution to the United States economy will substantially

outweigh any inherent national interest in protecting US workers through the cumbersome and time consuming labor certification." Ms. did not explain this conclusion. There is nothing intrinsic to an "offer of employment" to show eligibility for the waiver.

The petitioner submitted a copy of an April 20, 2012 letter from , chief financial officer of . Mr. stated:

> We have 1,800 acres under contract in Florida. . . .
>
> We would like you to survey our property and conduct comprehensive feasibility study as to the geological composition of our 1,800 acres to determine if there are sufficient phosphate reserves to justify the implementation of a recovery facility.

Ms. did not explain how this feasibility study would benefit the United States economy. Ms. earlier predictions of future economic benefit from phosphate recovery rely on the still unproven presumption that those deposits exist.

Ms. stated: "[a] recent article in the Smithsonian confirms that the 'gold rush' days have returned to California. Since [the petitioner's] research and studies have concentrated on precious metals and mineralogy, his talents and expertise are evidence of his potential contribution to the US economy." This assertion speaks to the intrinsic merit of the petitioner's profession, which the director had not disputed. Ms. provided no direct link between the petitioner's "offer of employment to survey 1,800 acres in Northern Florida" in search of phosphate deposits and the new "gold rush" in California.

Furthermore, the petitioner's initial submission gave no indication of the petitioner's intention to look for gold in California or elsewhere in the United States. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner submitted a letter from of the , who "reviewed the [petitioner's] Curriculum Vitae" and commented on it. did not claim any independent knowledge of the petitioner's work. noted the petitioner's "recent experience in hydrocarbon exploration from shale bodies," but the record does not show that any employer in the hydrocarbon industry has expressed an interest in employing the petitioner in that capacity.

asserted that "much of [the petitioner's] work will remain classified," but what is available "show[s] a wide range of expertise" and "a wide breadth and depth of experience in the mining industry [which] solidifies his reputation as a significant scientific contributor to the disciplines of Geology and Mineralogy." Any work that remains classified in another country would

appear to be unavailable for use by entities in the United States, and therefore will not prospectively benefit the United States.

A printout from web page did not indicate that his research interests overlap with those of the petitioner. Instead, the page stated:

> Our research is focused broadly on the interval of geologic time from the Mesoproterozoic (~1200 Ma) through the earliest Paleozoic (~490 Ma). I use paleomagnetism and geochronology to trace the history of continents during that time period (particularly the continents making up). We also examine the relationship between plate configuration, paleoclimate and the evolution of life on earth.

Copies of translated letters show internal communications within various academic and industrial entities within the USSR and, later, Russia. The translation of an undated letter signed by the president and secretary of the reads:

> For outstanding contribution to the development and implementation of mathematical methods and practice of computer use, the Geological survey are [*sic*] in vast gratitude to [the petitioner].
>
> Please provide [the petitioner] the opportunity to publish his findings in the

The letter appears to be, at its root, a letter clearing the petitioner's paper for publication in an Academy journal. Without other materials for context, USCIS cannot determine whether the reference to "outstanding contribution" is a special reference to the petitioner's work or standard language in such letters.

chairman of the , stated: "The foreign and domestic market has flourished thanks to [the petitioner's] high-economical system development and the implementation of precious metals and stones," and credited the petitioner with "establishing the mutually beneficial cooperation with ." In another letter, the same official stated that the petitioner created "highly effective systems of calculating the whereabouts of gold deposits," and recommended that "the system which [the petitioner] established to locate gold deposits, be widely implemented in the practice of geological exploration." The letter does not describe "the system," and the record contains no documentary evidence to show that the did, in fact, widely implement the system. The letter of recommendation is not, itself, evidence that the implementation later took place. Furthermore, the quoted letters date from 1998 and 1996, respectively. The record does not establish that the petitioner's methods remain in use, and thereby continue to contribute to the economy.

, vice president of the , recommended that the Academy "award financially [the petitioner] and his colleagues" for "his study of the identification of diamond

pipes in the region and the neighboring ." Other letters from the 1970s, 1980s and 1990s similarly congratulated the petitioner on his discovery of precious metal and mineral deposits, and his development of methods for their recovery. These tasks, however, appear to be inherent to the petitioner's specialty within geology. The letters contain few details about the petitioner's work, and afford no basis to compare the petitioner's past achievements with those of others in that specialty. Also, nearly all of the Russian letters are from more than a decade ago, and therefore they do not show that the petitioner has continued to make contributions to his field that would justify projections of future benefit to the United States.

What appears to be the only recent letter is a July 24, 2012 statement from . The translation indicated that the petitioner worked "at the [at the] through the years of December 1982 to January 1991," and, in May 1988, received "a great financial award of six months working salary and an award of gratitude." The Russian-language original letter does not show the dates "1982" or "1991." Rather, the corresponding paragraph gives the dates of the petitioner's employment as "декабря 1988 года по январь 1992 года." Because the Russian language uses the same Arabic numerals as English, no knowledge of the language is necessary to see the discrepancy between the Russian original and the English translation.

The translations submitted in response to the RFE also contain various grammatical errors (some of them identified above), and repeatedly refer to the Union of Soviet Socialist Republics as the "United Soviet Socialistic Union." The translations are certified as required by the regulation at 8 C.F.R. § 103.2(b)(3), but the above anomalies cast doubt on the reliability of the submitted translations and, therefore, on their weight as evidence. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The director denied the petition on November 6, 2012. In the denial notice, the director listed the petitioner's submissions but concluded that the petitioner had not submitted "corroborative primary evidence . . . specifying the direct role the beneficiary has played in the field as a whole." The director added: "While some witnesses indicate that the beneficiary has useful ideas in his field, the effectiveness of the beneficiary's method has not been strongly established. The suggestion that such methods might, possibly at some future date, be beneficial is not sufficient to establish eligibility for a national interest waiver." The director noted that the petitioner had not shown that his published work has attracted significant attention through citation or other means. The director also observed that the intrinsic merit of geology, and the national scope of the benefits that the field offers, do not automatically qualify a given geologist for the waiver.

On appeal, counsel states: "the Services [*sic*] has concluded that the beneficiary does meet the required standard for a National Interest Waiver since he meets 4 of the standards and the Service has acknowledged that he also meets the requirements of substantial intrinsic merit." Here, as

before, counsel refers to "4 . . . standards" for the waiver, but does not elaborate. The director, in denying the petition, did not state that the petitioner meets the requirements for the waiver. The "substantial intrinsic merit" guideline relates to the petitioner's occupation, rather than the petitioner individually, and is only one of several criteria that the petitioner must satisfy in order to qualify for the waiver.

Counsel states: "The Service . . . inferentially suggests that 'the beneficiary appears to be a Geologist.'" Counsel protests this "unfounded characterization" that "suggests that [the director did not review] his credentials." The director did not dispute that the petitioner is a geologist. Rather, the director stated that the petitioner seeks "to perform services as a Geologist," that he "will be employed as a Geologist," and that the waiver request "rests on the issue of the beneficiary's work as a Geologist." There is, however, a passage that reads: "Although the beneficiary appears to be a Geologist, there is little evidence to persuade USCIS that granting a waiver of the job offer requirement would be in the national interest in this case." In context, there appears to be a missing adjective before the word "Geologist"; the director evidently intended to say something like "Although the beneficiary appears to be a well-qualified Geologist. . . ." The director was not implying that the petitioner was somehow impersonating a geologist to qualify for the waiver. Rather, the director's point appears to have been that, to qualify for the waiver, it is not enough to show that one is a qualified geologist, because geologists are normally subject to the statutory job offer requirement. This isolated passage in the denial decision does not demonstrate prejudice on the director's part, particularly when the same decision contains numerous unequivocal references to the petitioner as a geologist.

Counsel asserts that the petitioner "has shown that the [*NYSDOT*] standard . . . has been met. . . . There is no quantum leap required to project that [the petitioner] will make a significant impact on the US economy since he has already demonstrated . . . his international recognition and achievements in the Soviet Union and 20 other countries." Counsel does not identify the "20 other countries"; the petitioner's documentation came from the USSR and the Russian Federation. Elsewhere in the appellate brief, counsel stated that the petitioner "was a contributing scientist to more than 35 countries."

Counsel notes that "gold prices are at an all-time high worldwide." The record shows that the petitioner has worked with gold in the past, but there is no objective, specific evidence to show that the petitioner has consistently had substantially more success in locating gold than other qualified professionals in his field. The discovery or identification of gold deposits does not automatically trigger the waiver. Rather, location of gold and other minerals appears to be an intrinsic part of the profession of geology. There is no blanket waiver for geologists, nor for the subset of geologists who have worked with gold in the past.

Furthermore, as noted earlier, the petitioner originally based the waiver request on phosphate prospecting in Florida, which is the subject of the petitioner's only documented offer of employment in the United States. The petitioner's earlier work with gold served to illustrate his prior career, rather than his future plans for work in the United States. Only after the director issued the RFE did counsel's paralegal assert that the beneficiary would serve the national interest through gold mining.

To establish the petitioner's influence on the field of geology and mineralogy, counsel cites previously submitted materials from 1965 to 1998, and asserts that the petitioner has influenced the field by publishing his work. Counsel claims that the petitioner's methods remain in use today, but does not support that claim with contemporary evidence. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Evidence from years ago is not evidence of current use of the petitioner's work. Counsel cites a presentation, "[redacted]" as an example of the petitioner's work, but that presentation dates from 1985. Following decades of subsequent progress, much of the computer technology from 1985 is now obsolete.

Counsel states that the appeal includes "a complete set of [the petitioner's] research and findings as it relates to his new theory for oil and gas exploration." Like the new emphasis on gold, the discussion of "oil and gas exploration" was not part of the initial petition. The petitioner initially predicated the waiver application on the prospect of "significant job creation in [redacted], FL," contingent on the discovery of phosphate deposits on property held by [redacted].

In a new affidavit, dated December 5, 2012, the petitioner states:

> My finding will dramatically reduce the cost of oil and gas exploration and at the same time prevent further damage to the environment.
>
> In my study I have concluded that dimethylether derived from shale is the most promising Diesel fuel for the future and at a cost that is measurably less than the cost of liquefied natural gas. . . .
>
> My invention the [redacted] is designed to extract the maximum amount of useful components from oil shale. The [redacted] now under construction is ideally suited to incorporate my findings that will create thousands of jobs throughout the United States. It will also in the future lower the actual cost of gasoline at the pump.

The appeal includes a December 4, 2012 letter from the petitioner to a patent attorney, indicating that the petitioner has "developed a completed self-contained system for obtaining a synthetic analysis of oil and gas by a special process [he] invented." The system is the "[redacted]" mentioned in the petitioner's affidavit. The petitioner contends that this "invention is of international significance since it is the new technology for extracting oil and gas from shale rock, with a minimal impact on the environment." The record does not indicate that the [redacted] is in use anywhere. The petitioner only began seeking a patent more than six months after the filing date, which suggests that the innovation has not advanced beyond the planning stages.

Regarding phosphate mining, the original basis for the waiver application, the petitioner submits background materials and an online article by the [redacted]

. The article does not mention the petitioner. Instead, it discusses various technical and environmental challenges that the seeks to address. Handwritten marginal notes contend that the petitioner's innovations address these problems, and thereby serve the national interest. There is no evidence that the is aware of the petitioner's research or intends to use it. The petitioner's stated intention to address the problems named by the is not evidence in support of the waiver claim.

The petitioner has claimed significant influence in the fields of geology and mineralogy. He has documented extensive experience, but experience is not the same as influence. In terms of how he intends to benefit the United States, the petitioner has provided information about phosphate, gold and hydrocarbon fuels, but he has not shown how his past work continues to have impact or influence in any of those areas. By moving between those different areas of geological research, the petitioner has not pursued a single, consistent line of reasoning to show that his future work will benefit the United States in ways that merit permanent immigration benefits.

As is clear from a plain reading of the statute, exceptional ability in the sciences does not automatically qualify an intending immigrant for a waiver of the job offer requirement based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.